

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10063-shl

4 Adv. Case No. 23-01192-shl

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6 In the Matter of:

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8 GENESIS GLOBAL HOLDCO, LLC,

9

10 Debtor.

11 - - - - - x

12 GEMINI TRUST COMPANY, LLC,

13 Plaintiff,

14 v.

15 GENESIS GLOBAL CAPITAL, LLC, et al.,

16 Defendants.

17 - - - - - x

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19 United States Bankruptcy Court

20 300 Quarropas Street, Room 248

21 White Plains, NY 10601

22

23 January 3, 2024

24 10:11 AM

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1 B E F O R E :

2 HON SEAN H. LANE

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: ALIANNA PERSAUD

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1 HEARING re OMNIBUS HEARING

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3 HEARING re Doc. # 1114 Notice Of Agenda

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5 HEARING re Doc. # 1064 Motion to Amend / Debtors Second
6 Motion to Amend the Order Authorizing the Debtors to Retain
7 and Compensate Certain Professionals Utilized in the
8 Ordinary Course of Business

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10 HEARING re Doc. # 1103 Conference Regarding Confirmation
11 Discovery Schedule

12

13 HEARING re Doc. #994 [REDACTED] Debtors Third Omnibus
14 Objection To Certain Claims (Duplicate) (Non-Substantive)
15 ***Claims 213 and 291 Withdrawn From Motion See Doc.
16 #1024***

17

18 HEARING re Doc. #995 [REDACTED] Debtors Fourth Omnibus
19 Objection To Certain Claims (Duplicate, Amended, No
20 Liability) (Non-Substantive)

21

22 HEARING re Doc. #998 [REDACTED] Debtors Sixth Omnibus
23 Objection To Certain Claims (Modify and Allow as Modified)
24 (Non-Substantive)

25

1 HEARING re Doc. #999 [REDACTED] Debtors Seventh Omnibus
2 Objection To Certain Claims (Modify and Allow as
3 Modified) (Non-Substantive)
4

5 HEARING re Doc. # 1000 [REDACTED] Debtors Eighth Omnibus
6 Objection To Certain Claims (Duplicate) (Non-Substantive)
7

8 HEARING re Doc. #1002 [REDACTED] Debtors Ninth Omnibus
9 Objection To Certain Claims (Duplicate) (Non-Substantive)
10

11 HEARING re Doc. #1003 [REDACTED] Debtors Tenth Omnibus
12 Objection To Certain Claims (Non-Substantive) (Duplicate)
13

14 HEARING re Doc. #1004 [REDACTED] Debtors Eleventh Omnibus
15 Objection To Certain Claims (Duplicate) (Non-Substantive)
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17 HEARING re Doc. #1005 [REDACTED] Debtors Twelfth Omnibus
18 Objection To Certain Claims (Duplicate) (Non-Substantive)
19

20 HEARING re Doc. #1006 [REDACTED] Debtors Thirteenth Omnibus
21 Objection To Claims (Duplicate) (Non-Substantive)
22

23 HEARING re Doc. #1007 [REDACTED] Debtors Fourteenth Omnibus
24 Objection To Certain Claims (Duplicate) (Non-Substantive)
25

1 HEARING re Doc. #996 [REDACTED] Debtors Fifth Omnibus
2 Objection To Certain Claims (No Liability) (Non-Substantive)

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4 HEARING re Adversary proceeding: 23-01192-shl Gemini Trust
5 Company, LLC v. Genesis Global Capital, LLC et al
6 Pre-Motion Conference

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25 Transcribed by: Sonya Ledanski Hyde

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17 MICHAEL WEINBERG
18 TIM WOLFE

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1 P R O C E E D I N G S

2 THE COURT: Good morning. How are you? Happy New
3 Year.

4 MS. VANLARE: Happy New Year. Good, how are you?

5 THE COURT: Oh, just dandy. Thank you. Give me
6 two seconds here to just -- good to go. Good morning. This
7 is Judge Sean Lane in the United States Bankruptcy Court for
8 the Southern District of New York. And we are here this
9 morning for a 10 o'clock hearing -- omnibus hearing in
10 Global Holdco, LLC, a Chapter 11 case. First off, Happy New
11 Year to all of you, and with that, we will turn to
12 appearances. So, starting with the Debtors.

13 MS. VANLARE: Good morning, Your Honor. Jane
14 Vanlare, Cleary, Gottlieb, Steen & Hamilton, and my
15 colleagues also are on the line. That would be Mr. Lenox,
16 Mr. Barefoot, Mr. O'Neal and others, as well.

17 THE COURT: All right. Good morning to you all.
18 On behalf of the Official Committee of Unsecured Creditors?

19 MR. WEST: Good morning, Your Honor. Colin West,
20 White & Case, on behalf of the Official Committee of
21 Unsecured Creditors, and with me today is my partner, Chris
22 Shore.

23 THE COURT: Good morning. On behalf of Gemini
24 Trust Company?

25 MR. FRELINGHUYSEN: Good morning, Your Honor, and

1 Happy New Year. This is Anson Frelinghuysen from Hughes
2 Hubbard & Reed. With me today are my colleagues, Jeff
3 Margolin and Carl Mills.

4 THE COURT: Good morning. On behalf of the Ad Hoc
5 Group of Genesis Lenders?

6 MR. ROSEN: Good morning, Your Honor, Brian Rosen,
7 Proskauer Rose and with me today is my partner, Mr. Peter
8 Doyle.

9 THE COURT: Good morning to you, as well. And as
10 is often the case, we have a lengthy, lengthy list of
11 appearances, and I'm not going to try to go through every
12 single one as I know a lot of people are here to listen in.
13 But let me get, at this point, any other appearances from
14 folks who anticipate speaking at today's hearing. All
15 right. I'm not hearing anyone, but I will say, to the
16 extent that someone ends up needing to speak who doesn't
17 anticipate that at the moment, you can always make your
18 appearance at that time. So, with that, I'll turn it over
19 to Debtors. I do have a copy of the Amended Agenda and so,
20 you can let me know the best way to proceed.

21 MS. VANLARE: Thank you, Your Honor. I'm going to
22 pass the virtual podium to Ms. Deandra Fike, our colleague
23 who will present the first item on the agenda.

24 THE COURT: Wonderful. Please proceed, counsel.

25 MS. FIKE: Good morning, Your Honor. This is

1 Deandra Fike of Cleary Gottlieb on behalf of the Debtors.
2 I'll be presenting Item 1 on the uncontested portion of the
3 agenda, which is the Debtors' Second Motion to Amend the
4 Order authorizing the Debtors to retain and compensate
5 certain professionals utilized in the ordinary course of
6 business, which is located at Docket No. 1064. The Motion
7 seeks to increase the overall case cap on payments to
8 ordinary course professionals from \$500,000 to \$1 million.
9 As these (indiscernible) have not progressed for almost a
10 year, certain ordinary course professionals or OCPs are
11 approaching the case limit or have had minor overages in an
12 individual month. (indiscernible) to continue payments to
13 the OCPs for the necessary services without the additional
14 burden from the resources of the Debtor is at stake and that
15 would accompany submissions of full retention applications
16 and fee applications and statements.

17 The Debtor (indiscernible) that the Motion, the
18 U.S. Trustee, counsel for the Committee and counsel for the
19 Ad Hoc Group of Lenders (indiscernible) indicated any
20 concern with relief sought in this Motion, nor has any
21 objection to the Motion been filed. (indiscernible) the
22 Debtor, therefore, asserts that the relief requested in the
23 Motion is in the best interest of the Debtors and
24 respectfully request that the Court authorize the increase
25 in the overall case cap. And the inadvertent payments in

1 excess of the OCP case cap should also be approved on a nunc
2 pro tunc basis as set more defined in the Motion.

3 THE COURT: All right. Thank you very much. Is
4 there any party that wishes to be heard on this Ordinary
5 Course Professional Motion? All right. Hearing no
6 response, seeing no objection on the docket, I'm happy to
7 grant the Motion in all respects and just note what's set
8 forth in the Motion, which is, we're talking about ordinary
9 course professionals. Sometimes people in bankruptcy in
10 large cases, sort of conflate the professional fees that
11 relate specifically to the bankruptcy with the professional
12 fees that are required for an ongoing Debtor to continue to
13 do what it needs to do as a matter of its business. So, all
14 right, well thank you very much, counsel. I'm happy to see
15 you. I believe it's the first time I've had the pleasure of
16 seeing you in this case. I look forward to future
17 appearances. Thank you.

18 MS. FIKE: Thank you, Your Honor. We will submit
19 the Order to your Chambers. And Your Honor, I will now also
20 be presenting Items 2, 3 and 6 through 12 on the uncontested
21 portion of the agenda which corresponds --

22 THE COURT: All right. Well, so closed out your
23 next appearances quicker than I anticipated, so that's good
24 to see.

25 MS. FIKE: Yes, and this corresponds to the

1 Debtors' 3rd, 4th and 8th through 14th on those claims
2 objections. (indiscernible) Items 4 and 5 on the
3 uncontested portion of the agenda as Item 1 on the contested
4 portion of the Agenda, the Debtors' 5th, 6th and 7th omnibus
5 claims objections will be presented by my colleague, Brad
6 Lenox.

7 THE COURT: All right. So, let me just make sure
8 which ones. Are you going to do them as a group or one at a
9 time, counsel?

10 MS. FIKE: Yes, Your Honor. If no objection given
11 that there's a fair amount of overlap between these items, I
12 would prefer just jointly presenting the uncontested omnibus
13 objection for your consideration.

14 THE COURT: All right. That's fine. So, let me
15 just make sure you've covered the numbers again just so I
16 can keep appropriate track. Thank you. Proceed.

17 MS. FIKE: Yes. Thank you, Your Honor. These
18 objections relate to claims that were amended, were
19 improperly asserted against multiple Debtors where only one
20 was potentially liable and claims for which the Debtors'
21 books and records show no liability, assert ownership of
22 equity interests or (indiscernible) either Master Claims
23 filed by the Ad Hoc Group or Gemini or (indiscernible) other
24 claims asserted by the same Creditor for the same amount.
25 And before even (indiscernible) to these objections, I'd

1 like to move to introduce into evidence the Declarations of
2 Paul Kinealy at Alvarez & Marsal North America, LLC, which
3 are each attached as Exhibit B to each of the Omnibus
4 Objections.

5 THE COURT: All right. Any objection to receiving
6 that Declaration into evidence for purposes of today's
7 hearing? All right. Hearing no response, I'm happy to
8 receive that Declaration in support of the Omnibus Claims
9 Objections.

10 MS. FIKE: Thank you, Your Honor, and I understand
11 Mr. Kinealy is on the line should Your Honor have any
12 questions for him.

13 THE COURT: Oh, thank you.

14 MS. FIKE: Additionally, due to potential
15 conflicts of interest, Kobre & Kim LLP is acting as full
16 counsel to the Debtors with respect to Proof of Claim No.
17 225, which is subject to the third objection and Proof of
18 Claim No. 44, which is subject to the fourth objection. I
19 understand that a representative of that firm is also on the
20 line today to the extent Your Honor should have any
21 questions, however, has no responses from the specific
22 claimants have been filed and the objections are proceeding
23 on an uncontested basis. Cleary Gottlieb will be presenting
24 the objections in full with that little caveat.

25 THE COURT: All right. Thank you very much and I

1 know to reach out to Kobre & Kim as counsel if anything
2 comes up as to those two claims. Thank you.

3 MS. FIKE: Thank you, Your Honor. Moving on to
4 the (indiscernible), with respect to the Debtor's Third
5 Omnibus Objection, the Debtors object to the claims on
6 Exhibit 1 to the proposed Order on the grounds that there
7 are duplicates of the Ad Hoc Master Claim filed on behalf of
8 its members, pursuant to the authority granted by this Court
9 in the Bar Date Order. Similarly, skipping ahead of it,
10 with respect to the 8th through 14th Omnibus Objections, the
11 Debtors object to the claims on Exhibit 1 to each of the
12 proposed Orders on the grounds that they are duplicates of
13 the Gemini Master Claim filed by Gemini Trust Company, LLC
14 on behalf of the Gemini lenders pursuant to the authority
15 granted by this Court, also in the Bar Date Order. The
16 Debtors, with the aid of their advisors, identified such
17 Gemini duplicate claims based on a variety of information,
18 including whether the Claimant indicated they were a Gemini
19 lender in their Proof of Claim, whether or not
20 (indiscernible) documentation or in response to Question 8
21 on the Proof of Claim form, and through informal exchanges
22 of information between the Debtors and Gemini. The Debtors
23 seek to disallow and expunge such claims to avoid improper
24 duplicate recoveries for the same Claimant against the
25 Debtors' estate.

1 And finally, for the Debtors' 4th Omnibus
2 Objection, the Debtors have object to the claims on Exhibits
3 1 through 5 of the proposed Order on the grounds that the
4 claims are duplicates of another claim filed against the
5 same Debtor entity by or on behalf of the same Claimant and
6 relating to the same supported liability. The claims have
7 been amended and superseded by one or more claims
8 subsequently filed by or on behalf of the same Claimant with
9 respect to the same supported liability. The claims were
10 improperly filed against multiple Debtors where only a
11 single Debtor is potentially liable. The Debtors have no
12 liability for the claim if the amount claimed is not
13 reflected in the Debtors' books and records. And similar,
14 with respect to a single claim, the supporting documentation
15 made clear that the claim was based on ownership of equity
16 security in one of the Debtors and therefore, is an equity
17 interest rather than a valid claim against the Debtors. And
18 with that, unless Your Honor has any questions pursuant to
19 Rule 3007 and the Claims Procedures Order, the Debtors
20 request that the claims listed on the Exhibit to the
21 proposed Order, Omnibus Objections 3, 4 and 8 through 14,
22 other than those whose objections have been withdrawn or
23 adjourned as indicated on the Agenda be disallowed in full
24 and expunged from the register.

25 THE COURT: All right. Thank you very much. Let

1 me specifically ask Gemini if it wishes to be heard in
2 connection with any of this. Obviously, because many of
3 these claim objections are relating to the Gemini master
4 claims. Anything from Gemini?

5 MR. MARGOLIN: Good morning, Your Honor. Jeff
6 Margolin, Hughes Hubbard & Reed, for Gemini. Your Honor,
7 we've coordinated with the Debtors in connection with these
8 Omnibus Objections and that we have no issue with the relief
9 requested before the Court this morning.

10 THE COURT: All right. Thank you very much. Let
11 me ask if any other party wishes to be heard in connection
12 with these objections, that is 3, 4 and 8 through 14. All
13 right, hearing no responses, I am happy to grant in full --
14 I'm just going to group them this way, 3 and 8 through 14
15 because they're all of a similar ilk, that is, they're all
16 duplicates of the Gemini Master Claims and therefore, it's
17 appropriate to expunge these duplicate claims. There
18 doesn't appear to be any dispute that they are duplicate
19 claims and that's why I wanted to make sure to touch base
20 with Gemini just to make sure we're all on the same page.
21 And I also note there was a conversion rate correction for a
22 claim that's mentioned in the 3rd Omnibus Objection and
23 that's a matter of calculation. Again, it seems entirely
24 appropriate to make sure that the numbers are correct. So,
25 I'm happy to grant those objections.

1 At some point this morning, it's appropriate, I
2 think, for me to put on the record the basic rules of the
3 Claims Objections and now is probably as good a time as any
4 since this is the first set. So, Section 502(a) of the
5 Bankruptcy Code provides that a filed Proof of Claim is
6 deemed allowed unless a party in interest objects. If the
7 claim is properly filed, and we'll get to that in a minute,
8 it is prima facie evidence that the claim is valid. See
9 Federal Rule of Bankruptcy Procedure 3001(f). But that's a
10 rule that requires a claimant to attach supporting documents
11 to a Proof of Claim. See Rule 3001(c). So, a party in
12 interest may object to a proof of claim and once an
13 objection is made, the Court must determine whether the
14 objection is well-founded. And there's more cases on that
15 than you can shake a stick at, so I'll just simply cite
16 Colliers on Bankruptcy Paragraph 502.02, subsection 2.

17 Although Rule 3001(f) establishes the initial
18 evidentiary effect of a filed claim, the burden of proof
19 rests in different parties and different times. See
20 Allegheny International, Inc. at 954 F.2d 167 at 173 (3rd
21 Circuit 1992). So, claims objections have a shifting burden
22 of proof. Correctly filed proofs of claims constitute prima
23 facie evidence of the validity and amount of the claim and
24 to overcome this prima facie evidence, an objecting party
25 must conform with the evidence which it believed would

1 refute at least one of the allegations essential to the
2 claim. See *Sherman v. Novak* 254 Bankruptcy Reporter 768 at
3 773 (2nd Circuit 2000). By producing evidence in equal
4 force to the prima facie case, an objector can negate a
5 claim's presumptive legal validity, which shifts the burden
6 back to the Claimant to prove by a preponderance of the
7 evidence that under applicable law, the claim should be
8 allowed. See *Kramer vs. Motors Company* at GUC Trust 2013
9 U.S. District Lexis 143957, Star Pages 12-13 Southern
10 District of New York September 26, 2013. See also *In Re MF*
11 *Global Holdings, Ltd.* 2012 Westlaw 5499847 at Star 3
12 Southern District of New York November 13, 2012. So, if an
13 objector does not introduce evidence as to the -- about the
14 claim or the excessiveness of the amount, a claimant doesn't
15 actually need to offer any proof of the merits of its claim.
16 So, in other words, an objector has to come forward with
17 something of substance.

18 So, getting back to what is a prima facie valid
19 claim, the caselaw is clear that if a claimant fails to
20 comply with the Rule 3001 documentation requirements, the
21 Claimant is not entitled to prima facie validity of the
22 claim. See, among other things, *In Re (indiscernible)* 424
23 Bankruptcy Reporter 104 at 112, Bankruptcy Southern District
24 of New York 2010. That's a consumer case dealing with a
25 mortgage, but the same rules apply to all claims. See also,

1 In Re Umberg 2008 Westlaw 4829846 Star 2, Bankruptcy
2 District of Connecticut 2008. See also, In Re Hate, 393
3 Bankruptcy Reporter 484 at 493 Bankruptcy Southern District
4 of Texas 2008. So, Bankruptcy Code Section 502(b)(1) also
5 provides that claims may be disallowed if unenforceable
6 against the Debtor and property of the Debtor under any
7 agreement or applicable law and to determine whether a claim
8 is allowable by law, Bankruptcy Courts look to applicable
9 non-bankruptcy law. See In Re W.R. Grayson Company 346
10 Bankruptcy Reporter 672 at 674 Bankruptcy District of
11 Delaware 2006. And in assessing a proof of claim, federal
12 pleading standards apply. See In Re Residential Capital 518
13 Bankruptcy Reporter at 731. See also In Re DJK Residential,
14 LLC 416 Bankruptcy Reporter 100 at 106 Bankruptcy Southern
15 District of New York 2009. And that means that a claimant
16 must allege enough facts to state a claim for relief that is
17 plausible on its face. See Vaughn vs. Air Line Pilots
18 Association International 604 F.3d 703, 709 Second Circuit
19 2010, and that's citing Iqbal vs. -- sorry, Ashcroft vs.
20 Iqbal 556 U.S. 662 at 678 2009, a case, among many, that
21 parsed the plausibility rules, which I don't think we need
22 to do a deep dive into at the moment. So, those are the
23 general rules about claims objections.

24 And there's also case authority that makes it very
25 clear that pro se claimants are required to conform to these

1 same rules regardless of their pro se status. See In Re
2 Residential Capital 2013 Westlaw 5524728 at Page Star 4,
3 Bankruptcy Southern District of New York 2013. See also
4 Powers vs. Runyon 974 (indiscernible) 693 at 696 Southern
5 District of Indiana 1997, which talks about, all pleadings
6 of a pro se litigant are considered liberally. There's no
7 lower standard when it comes to the rules of evidence and
8 procedures. And so that means that where a claimant has not
9 submitted sufficient documentation to support their proof of
10 claim, they haven't met their prima facie burden and that is
11 a basis for a claim being expunged. And again, that's see
12 In Re Residential Capital 2013 Westlaw 5524728.

13 So, with that, those are the rules that I'm
14 applying for all the Claimant's objections today and
15 obviously would apply for any other claims objections in the
16 future. And so, I'm happy to grant, as we just discussed,
17 the objections to Numbers 3 and 8 through 14. I did have a
18 question for the 4th Omnibus Claim Objection. I certainly
19 understand and I think there are a number of charts,
20 exhibits, for the Claim Objections where you have multiple
21 basis, so I certainly understand for the 4th Omnibus Claim
22 Objection and agree with you on the duplicates, the amended
23 -- the multiple Debtor claims. And there's caselaw that
24 talks about the fact that an equity interest is not a claim
25 and so, therefore, I'm happy to grant that, as well. Let me

1 just throw out a cite for purposes of that going forward.
2 So, that is, an equity interest is not a claim against the
3 Debtor which an equity holder may assert a right to payment
4 by filing a proof of claim. So, see In Re Pine Lake Village
5 Apartment Company, 21 Bankruptcy Reporter 478 at 480,
6 Bankruptcy Southern District of New York 1982. And that's
7 discussed in another case, Motors Liquidation Corporation
8 2012 Westlaw 1886755 Southern District of New York Decision
9 for May 21, 2012 by Judge Sullivan on the District Court.

10 So, my question relates to the one other thing
11 that's left on the 4th Omnibus Claim Objection, which is the
12 no books and records objection. And so, looking at this
13 Omnibus Claim Objection and some of the others, I obviously,
14 in circumstances like this, don't have the claims themselves
15 unless they're filed because there's a party that's handling
16 the claims who is acting as claims agent as opposed to the
17 Clerk of the Court. So, that gives me a challenge in
18 analyzing if the claims themselves are prima facie valid.
19 So, there's several ways that that comes up in the context
20 of the claim objection, which you all know, obviously, is,
21 if they don't have supporting documentation, then they're
22 not prima facie valid, in which case, you presented
23 sufficient evidence to say they're not in your books and
24 records. But if they have submitted appropriate
25 documentation that makes the prima facie valid, then the

1 question is, how to sort through the different statements
2 and whether they're going to contest the matter or whether
3 there's a sufficient -- there's another more detailed
4 explanation that means that their other claims objection
5 rules allow me to grant the claims objection that is
6 unenforceable against the Debtor or there's something else
7 in more detail.

8 So, some of the claims objections, like Number, I
9 think it's 7, say that the claims -- certain claims aren't
10 prima facie valid, which when we get to that, my question
11 will be whether that means there's no supporting
12 documentation. For this one, I didn't see necessarily that
13 statement, so I was just trying to figure out for the books
14 and records aspect of the 4th Omnibus Claim Objection, do
15 those have documentation? Do those not have documentation?
16 So, is the objection based on the lack of documentation, and
17 the books and records, or is it based on something else?
18 So, sorry, that's a very, very long windup, counsel, to my
19 question about what the sort of, drilling down a little bit
20 on the books and records aspect of the 4th Omnibus.

21 MS. FIKE: (indiscernible) and our apologies. We
22 should have included that. The no books and records claims,
23 as stated in Declaration of Paul Kinealy (indiscernible) the
24 Debtor is going back and forth with their advisors to review
25 the Debtors' books and records, as well as taking a look at

1 the claims and determining that there was insufficient
2 information for the Debtors and the Debtors' advisors to
3 determine what the basis of the liability against the
4 Debtors would have been, and therefore, assert there is no
5 liability against the Debtors. We're happy to --

6 THE COURT: Well, where's the argument that the
7 claims are not prima facie valid because they didn't contain
8 information -- documentation attached that would state that
9 kind of a claim against the Debtors? Or is it something
10 where it's a more -- it might look one way, but when you
11 drill down, it's not? So, again, the shifting burdens can
12 be an interesting conversation in terms of how to parse
13 these things. So, that's why I'm just trying to drill down
14 just to get a good sense of what they are. And also, since
15 this is the first claims objection, I think, that we've
16 gotten together on, particularly for books and records, it's
17 always good to, sort of, just get everybody on the same page
18 on that. So, your thoughts, counsel?

19 MS. FIKE: Yes. So, this is insufficient
20 documentation and the no books and records portion of it
21 comes in as we're asserting that it's inconsistent with the
22 Debtors' books and records in so far as it's non-reflective
23 in the Debtors' books and record, and therefore, we also
24 weren't --

25 THE COURT: See, that's fine. If there was

1 sufficient documentation and there was a books and records
2 objection, then I'd have a contested matter in a lot of
3 instances because I wouldn't be able to figure out which one
4 is which, and that's why it's important to get to the
5 question of whether the documentation is sufficient. And
6 so, I don't know if it's possible to get a little more
7 detail, just for purposes of making an appropriate record,
8 as to what the documentation that was submitted for these
9 claims looked like and why it's not sufficient for prima
10 facie validity. Often times I don't need to do that because
11 I have the claims themselves, and so that's another way to
12 proceed in the future just to make it easier. You can say,
13 "Judge, if you'll look at this claim, for example, they all
14 look this way, and this is a good example. And if you look
15 at it, you'll see it says 'X', but it doesn't provide the
16 following information. We can't -- therefore, it's not
17 prima facie valid." But without that, another way to do it
18 is to have your Declarant, sort of, walk me through that
19 based on your analysis of the proofs of claim. I'm happy to
20 do it whatever way is easiest and most efficient. So, we
21 could do it now. We could also adjourn this portion and tee
22 it up the next time we get together. I'm open to your
23 suggestion.

24 MS. FIKE: Understood, Your Honor. This is our
25 way of explaining that we have insufficient documentation

1 and so, for the majority of these claims, obviously I don't
2 have them in front of me either at the moment, but they were
3 lacking documentation. So, we're happy to have our
4 Declarant, if he's prepared, to walk through the exhibits
5 which contains all the notebooks and records claims, attest
6 to that or if -- of course, being sensitive to the
7 (indiscernible) rulings as to the proofs of claim. Or
8 otherwise, of course, if Mr. Kinealy is more comfortable, we
9 can address this more fully at a later date.

10 THE COURT: So, let me do it this way for Mr.
11 Kinealy. Because I know Mr. Kinealy is the Declarant for a
12 whole bunch of Claims Objections and don't necessarily have
13 everything readily at hand. So, what I'd say is, if you
14 want to think about how you want to handle this one, we can
15 go to the other ones and loop back and that would be fine.
16 Again, I'm not trying to put anybody on the spot. There's a
17 lot of claims at issue that are the subject of these Claims
18 Objections and there are, in fact, a lot of Claims
19 Objections. So, if Mr. Kinealy wants to take a moment to
20 think about it, that's fine, we can loop back to that.
21 Again, the idea is that, going forward, one way to do it is
22 to give me the claims. The other way to do it is to give me
23 a description and say, "Here's the kind of information.
24 Either some of them had no documentation or the
25 documentation they had was of this kind and that's not

1 sufficient and doesn't give the prima facie validity because
2 it doesn't give us the following information we need to
3 understand things." So, hopefully this is helpful and
4 obviously, if anybody has any questions, I'm happy to have a
5 discussion about it back and forth. The idea is for
6 everybody to be on the same page and things to be as clear
7 as possible. So, let's leave the 4th Omnibus Objection for
8 a moment, unless Mr. Kinealy wants to dive in now, in which
9 case, I won't stand in his way, but I'm also, again, happy
10 to wait after we go through the other objections. Mr.
11 Kinealy, do you have a preference?

12 MR. KINEALY: Let's get back to it. I think I
13 know -- I just want to check a couple of things, but let's
14 come back to it.

15 THE COURT: That's --

16 MS. FIKE: And Your Honor, we're happy to actually
17 adjourn these, so that we have the hearing coming up on the
18 18th so that we can provide that supplemental information.

19 THE COURT: All right. Well, I'll give you a
20 chance to chat about it while we do the other ones. I'm
21 happy -- there's an old game show, Password, your option,
22 pass or play. I'm dating myself here but I'm happy to do it
23 whatever way is most efficient and sensible. So, with that,
24 we'll move on to the other Claims Objections. But just to
25 be absolutely clear, claim objections, the 3rd one is

1 granted, Claims Objections 8 through 14 are granted and
2 Claim Objection 4 is granted as to duplicate, which is I
3 guess (i) amended, (ii) multiple Debtor claims, (iii) and no
4 liability, meaning equity interest, which is (v). And so,
5 we're only talking about one aspect of the 4th Omnibus
6 Objection that's open is the notebooks and records. So, all
7 right, with that, thank you very much and we can move onto
8 the next Claim Objection, whoever would like to jump in.

9 MS. FIKE: Thank you, Your Honor. We'll submit
10 the Orders with that change, and we'll circle back to you on
11 that. I will now pass the virtual podium to my colleague,
12 Brad Lenox, who will present the next agenda item.

13 THE COURT: All right. Thank you very much. And
14 one thing I'll say, I don't have the -- without having the
15 benefit of the claim in front of me, I'm often just setting
16 out some general rules and so, you can -- I trust you all
17 will just give me the details. There's a bunch of different
18 ways to do that and I'll leave that to your considered
19 professional judgment. So, all right. Mr. Lenox?

20 MR. LENOX: Good morning, Your Honor. Brad Lenox
21 of Cleary Gottlieb for the Debtors. I will be addressing
22 the 4th and 5th agenda items on the uncontested portion of
23 today's agenda, as well as the sole contested item.

24 THE COURT: All right.

25 MR. LENOX: I will begin with Agenda Item No. 4,

1 which is the Debtors' 6th Omnibus Objection to certain
2 claims which was filed at ECF No. 998, and which can be
3 found at Tab 9 in Your Honor's binder. Before proceeding
4 with the substance of this objection, I will address a few
5 housekeeping items. First, the Debtors move to introduce
6 into evidence the Declaration of Paul Kinealy of Alvarez and
7 Marsal, the Debtors' financial advisor, which was filed as
8 Exhibit B in support of the 6th Omnibus Claims Objection.

9 THE COURT: All right. Anybody wish to be heard
10 on that request? Hearing no party, I'm happy to receive his
11 Declaration in support of the 6th Omnibus Claim Objection.

12 MR. LENOX: Thank you, Your Honor. And second, as
13 was the case with certain of the Claims Objections presented
14 by my colleague, Ms. Fike, Kobre & Kim is acting as sole
15 counsel to the Debtors with respect to Claim No. 45, which
16 is subject to this objection. And as was the case with the
17 prior objections, because no specific response from this
18 Claimant was filed and the Objection is otherwise proceeding
19 on an uncontested basis, Cleary Gottlieb will be presenting
20 the objection in full, with that note.

21 THE COURT: All right. Thank you.

22 MR. LENOX: And third and finally, the Debtors
23 have filed the Joint Stipulation and Proposed Order at ECF
24 No. 1102 with the holder of claim per 1050, which is one of
25 the claims subjected to the Debtors' objection. And the

1 Debtors have also withdrawn the 6th Omnibus Objection as to
2 this claim. Consequently, the 6th Omnibus Claims Objection
3 is not going forward today with respect to Claim No. 1050.

4 THE COURT: All right, and that's on for
5 presentment tomorrow, I believe.

6 MR. LENOX: Correct, Your Honor. Proceeding to
7 the substance, the Debtors' 6th Omnibus Claims Objection
8 seeks to modify and allow as modified, certain Proofs of
9 Claim that the Debtors, in consultation with Alvarez &
10 Marsal, believe were filed against an incorrect Debtor
11 entity. Specifically, for each of the affected claims, the
12 Debtors' schedules or books and records do not support a
13 basis for liability against the Debtor entity identified in
14 the applicable Proof of Claim. Each of the affected Proofs
15 of Claim, however, does correspond to a claim scheduled
16 against a different Debtor entity in an amount consistent
17 with or greater than the filed claim. These disputed claims
18 are identified on Exhibit 1 to the proposed Order filed with
19 the Objection. None of the affected Proofs of Claim include
20 any evidence to support a claim for liability against a
21 Debtor other than the applicable Debtor identified in the
22 Debtors' schedules and books and records. Consequently,
23 consistent with the Claims Objections Procedures Order
24 previously entered by this Court, the 6th Omnibus Claims
25 Objection is necessary to prevent improper recovery and to

1 assure that the Claims Register is accurate and consistent
2 with the Debtors' schedules and books and records. We note
3 that the Debtors filed a revised proposed Order at ECF No.
4 1110 to clarify the Debtors' reservations of their rights
5 with respect to the affected claims. And unless Your Honor
6 has any questions, the Debtors respectfully request that the
7 Court sustain the 6th Omnibus Claims Objection and enter
8 this revised proposed Order.

9 THE COURT: All right. Thank you very much. Let
10 me ask if there's any party that wishes to be heard on the
11 6th Omnibus Claim Objection. All right, hearing no
12 response, I note there's also no objection on the docket.
13 Counsel, I think you just answered, in your recitation, the
14 question I had. I noted that Exhibit 1, while there's
15 mention in the Claim Objection itself about amounts, the
16 Exhibit 1 actually really only talks about the Debtor. And
17 I'm assuming, based on your statement a minute ago that
18 that's because all the claim amounts, none of them are going
19 down, they're either at the same amount or greater amount.
20 Is that correct?

21 MR. LENOX: Correct, Your Honor. The claims, as
22 filed, would be allowed in the amount asserted in the Proof
23 of Claim.

24 THE COURT: All right. All right. Thank you very
25 much. And so, I'm happy to grant your request to modify the

1 claims against the correct Debtor as set forth in Exhibit 1
2 based on the evidentiary record that I have. And I have one
3 last question, which may, in fact, be a stupid one, but it's
4 a good opportunity for me to get educated. I did see that
5 claims would be allowed in the amounts asserted and you can
6 convert the claims to cash, but reserve the right to pay in
7 crypto, and so my question is, and it may be -- I may just
8 not have enough background on exactly how this is going to
9 work, is if you're converting it now, does that mean it has
10 to be reconverted later? And if so, I was just wondering
11 the reason behind that approach, so maybe you can educate me
12 on that particular issue.

13 MR. LENOX: Your Honor, the intention is to
14 preserve optionality for actual distribution of the Plan,
15 but the allowance in USD is as required by 502(b) of the
16 Bankruptcy Code.

17 THE COURT: All right, and I'm assuming there'll
18 be, essentially -- I guess my question, how the true up
19 would be in the sense of whether there would be any winners
20 and losers by virtue of converting and then reconverting
21 because I can imagine both circumstances and that's kind of
22 a Plan issue in some ways. So, I don't know if there's
23 anything else worth discussing on that issue now or if it's
24 a premature discussion.

25 MR. LENOX: Yeah, respectfully Your Honor, we

1 would submit that that's a Plan-related issue as it relates
2 more precisely to the specific distribution mechanics of the
3 Plan.

4 THE COURT: All right, but I guess it would be
5 correct to say that while it's being converted consist with
6 the requirements of the Code that is claimed to being paid
7 in cash, that the Debtors are keeping track of the amount of
8 the claim and the applicable currency for purposes of
9 optionality and the Plan and payouts in the future.

10 MR. LENOX: Yes, that's correct, Your Honor.

11 THE COURT: Okay. Thank you. All right. All
12 right, with that, that was my only other question. I'm
13 happy to, again, as I said, the 6th Omnibus Claim Objection
14 as entirely appropriate under the facts and circumstances
15 here and applicable law on claims objections. And so, the
16 6th Omnibus Claim Objection is granted. So, next up
17 counsel?

18 MR. LENOX: Thank you, Your Honor. I will now
19 turn to Agenda Item No. 5, which is the Debtors' 7th Omnibus
20 Objection to certain claims, which was filed at ECF No. 999,
21 and which can be found at Tab 11 of Your Honor's binder. I
22 will similarly begin with a few housekeeping items. The
23 Debtors move to introduce into evidence the Declaration of
24 Paul Kinealy, which was also filed as Exhibit B to this 7th
25 Omnibus Claims Objection.

1 THE COURT: All right. Anyone wish to be heard on
2 that request? All right. Hearing no response, I'm happy to
3 receive it as evidence.

4 MR. LENOX: Thank you, Your Honor. Second and
5 finally, the Debtors' Objection as to Claim Nos. 55, 363,
6 402 and 405 has been adjourned to the January 18, 2024
7 hearing scheduled before Your Honor. And so, the relief
8 requested with respect to those claims will be addressed at
9 that time.

10 THE COURT: All right. Thank you very much. And
11 just a side note, I do appreciate the status notes in the
12 agenda that are very helpful to sort through those things.
13 So, thank you for including that in the agenda.

14 MR. LENOX: Of course, Your Honor. And one
15 additional adjournment-related item to add, last evening the
16 Debtors also requested from Chambers a similar adjournment
17 as to Claim No. 493, and so subject to Your Honor's granting
18 of this request, the Debtors' Objection will also not be
19 going forward today as to that claim.

20 THE COURT: All right. I'm happy to grant that
21 request. Thank you.

22 MR. LENOX: Thank you, Your Honor. Turning to the
23 substance, the Debtors' 7th Omnibus Claims Objection seeks
24 to modify and allow as modified, certain claims that the
25 Debtors, in consultation with Alvarez & Marsal, believe were

1 filed in incorrect amounts and/or against any incorrect
2 Debtor. Those claims where the Debtors dispute both the
3 Debtor identified in the applicable Proof of Claim and the
4 asserted amounts are listed on Exhibit 1 to the proposed
5 Order. And those claims where the Debtors solely dispute
6 the amount are listed on Exhibit 2 to the proposed Order.
7 None of the affected Proof of Claims included evidence to
8 support a claim for liability in the asserted amount or
9 against the Debtor other than the applicable Debtor in the
10 applicable amount identified in the Debtor schedules and
11 books and records.

12 Consequently, and consistent with the Claims and
13 Procedures Order previously entered by this Court, the 7th
14 Omnibus Claims Objection is necessary to prevent improper
15 recovery and ensure that the Claims Register is accurate and
16 consistent with the Debtors' schedules and books and
17 records. And similarly, as was the case with the 6th
18 Omnibus Claims Objection, the Debtors also filed a revised
19 proposed Order at ECF No. 1111, which contains identical
20 changes as were made to the 6th Omnibus Claims Objections
21 proposed Order. So, unless Your Honor has any questions,
22 the Debtors respectfully request that the Court sustain the
23 7th Omnibus Claims Objection and enter this revised proposed
24 Order.

25 THE COURT: All right. Thank you very much. Any

1 party that wishes to be heard on the 7th Omnibus Claim
2 Objection? All right, hearing no response, I also note that
3 there was no opposition on the docket. And so, two minor
4 questions, one is, you had said that none of the claims
5 actually present evidence of the amounts due and therefore,
6 essentially, you looked to the Debtors' books and records
7 for the schedule claims. So, I did see the line in the 7th
8 Omnibus Claim Objection saying none of the claims are prima
9 facie valid, so I'm assuming that for purposes of again,
10 thinking about the burden shifting that goes on for claims
11 objections, that the notion is here that they aren't prima
12 facie valid because they don't contain that information and
13 therefore, I can look to the Debtors' books and records, the
14 Declaration that's been provided and the schedules for that
15 amount.

16 MR. LENOX: Yes, Your Honor, the same logic and
17 line of thinking as described by my colleague, Ms. Fike,
18 would similarly apply as to this Claims Objection.

19 THE COURT: Well, but I think I saw the line here
20 that I didn't see in the 4th one which says none of the
21 claims are prima facie valid. And so, again, because
22 depending on what the record is, sometimes you can have
23 evidence that's conflicting, where nothing is dispositive.
24 But if you don't have a prima facie valid claim and you all
25 come forward with appropriate evidence as you have here,

1 then that's the end of the story as opposed to a prima facie
2 valid claim, for example, one that would say, "Here's
3 everything I have and here's the documentation that includes
4 everything that I would need for a prima facie valid claim."
5 Then you have conflicting evidence, and you have to figure
6 out how best to sort through that or what other explanations
7 might apply. So, again, I did see that line here in the 7th
8 Omnibus Objection that said that none of the claims here
9 that are objected to in terms of amount are prima facie
10 valid. And so, that's, again, that's why I'm like a dog
11 with a bone on this particular issue in terms of making sure
12 that we comport with the claim objection protocols. So, am
13 I right in understanding that for the ones that are books
14 and records or referencing the schedule, that those claims
15 don't actually -- they aren't prima facie valid in the sense
16 that they don't include an actual amount that would give
17 them that status?

18 MR. LENOX: Yes, Your Honor. That is correct.

19 THE COURT: All right. Thank you very much. So,
20 sorry for these questions that I'm asking, it's a long build
21 up. So, if I lose you along the way, please let me know.
22 And the only other question I had was just for purposes of
23 the record, I saw in the Exhibit 1 chart here and I note
24 that it has type of claim under the Bankruptcy Code prior
25 already administrative secured, etc., etc., and then goes on

1 to talk about the subtotal in kind amount and then on the
2 other side, the subtotal pro forma amount. And I thought it
3 might be helpful to just put a brief explanation on the
4 record as to what that means in plain English so people know
5 because I would expect we might see more of those kinds of
6 charts in the future and that that concept is going to play
7 itself out going forward. So, I'd appreciate it if you
8 could just give a short explanation of the nomenclature in
9 the chart.

10 MR. LENOX: Of course, Your Honor, and Mr.
11 Kinealy, of course, should please jump in with any
12 additional information to the extent helpful. But in short,
13 the intention of the chart with respect to the in-kind
14 amount was to reflect the amounts actually asserted in the
15 Proof of Claim, whether they be in crypto currency or in
16 USD. And the pro forma amount in the subsequent column is
17 to reflect the conversion for purposes of allowance to USD
18 as required under 502(b).

19 THE COURT: All right. Mr. Kinealy, anything you
20 wanted to add to that?

21 MR. KINEALY: No, that's correct. What he said.

22 THE COURT: All right. Thank you very much. With
23 that counsel, anything else to add to the 7th Omnibus Claim
24 Objection?

25 MR. LENOX: No, Your Honor.

1 THE COURT: All right. So, given the factual
2 record before me as we've discussed here today and noting
3 the lack of objection either on the docket or here at the
4 hearing, and the additional information provided on the
5 record, I am happy to grant the 7th Omnibus Objection in
6 full, that is to correct incorrect Debtors and also to amend
7 the claims to the amounts that are reflected in the schedule
8 or the books and records where those amounts differed from
9 the claims. So, that is granted. Thank you very much.

10 Next up?

11 MR. LENOX: Your Honor, I believe that will
12 conclude the uncontested portion of today's agenda, and so I
13 will now proceed to the sole contested portion of the --
14 sole contested item on today's agenda, which is the Debtors'
15 5th Omnibus Objection to certain claims which was filed at
16 ECF No. 996, and which can be found at Tab 6 in Your Honor's
17 binder.

18 THE COURT: All right. Thank you. Please
19 proceed.

20 MR. LENOX: Thank you, Your Honor. The Debtors
21 received only one response in opposition to the Debtors'
22 Objection, which was filed by Ms. Allison Stahl-Drew at ECF
23 No. 1070 with respect to Claim No. 747. Unless Your Honor
24 has any issues with this approach, I would propose beginning
25 with the 5th Omnibus Claims Objection as it relates to

1 claims (indiscernible) Claim No. 707 and then separately
2 addressing Ms. Drew's response.

3 THE COURT: Yes, please.

4 MR. LENOX: Again, as a threshold matter, the
5 Debtors move to introduce into evidence the Declaration of
6 Paul Kinealy of Alvarez & Marsal, which was filed as Exhibit
7 B in support of the Claims Objection.

8 THE COURT: All right. Anyone wish to be heard on
9 that request? Hearing no response and seeing no objection
10 on the docket, I'm happy to receive that as evidence.

11 MR. LENOX: Thank you, Your Honor. Turning again
12 to the substance, the Debtors' 5th Omnibus Claims Objection
13 seeks to disallow and expunge in full certain claims of the
14 Debtor and consultation with Alvarez & Marsal have
15 determined are not reflected in the Debtors' books and
16 records and where Claimants have failed to provide any
17 informational evidence in support of the asserted
18 liabilities.

19 Consequently, these claims, which are listed on
20 Exhibit 1 to the proposed order, should be disallowed in
21 full in order to prevent improper recovery. Therefore, the
22 Debtors respectfully request that Your Honor sustain the
23 objection, other than with respect to Claim Number 747,
24 which will be addressed shortly, and enter the proposed
25 order attached as Exhibit A.

1 THE COURT: All right, thank you very much. And
2 let me ask if there's any party that wishes to be heard on
3 the fifth omnibus claim objection.

4 Hearing no response and putting aside for one
5 minute the claim objection where there was an opposition
6 that was filed, on ECF 1071, I did see in Paragraph 19 of
7 this claim objection, it says that the no-liability claims
8 addressed in its objections do not meet the standards for
9 prima facie validity. And so my understanding, to translate
10 that to the specifics here, is that they don't actually
11 present a dollar amount or documentation that allows -- that
12 gives it that status. Is that right, counsel?

13 MR. LENOX: Yes, that is right, Your Honor.

14 THE COURT: All right, and so given that lack of
15 prima facie validity and the declaration that's been
16 provided and which serves as evidence, I'm happy to grant
17 the claim objection as to all the claims other than the one
18 where an opposition was filed. And we'll turn to that one
19 next, but for the rest of them, I find it's appropriate
20 under the facts and circumstances and applicable law, again,
21 using the shifting burdens of claim objections.

22 And again, I appreciate, and when we go forward to
23 claims objections in the future, it's always helpful to have
24 just the detail you can provide when we get into the prima
25 facie validity issue, just so I have a good understanding of

1 that. And we can go ahead at whatever hearing when it's
2 scheduled, rather than go to the expense and time of having
3 another hearing. And it's fine if we do that, as
4 appropriate, but just so that we're all on the same page.

5 So with that, we can turn to the one claim that
6 had an objection. Counsel?

7 MR. LENOX: Of course, Your Honor. Turning now to
8 the contested portion of this objection, the Debtors filed
9 the fifth omnibus claims objection to disallow and expunge
10 in full Claim Number 747, filed by Ms. Allyson Staahl-Drew
11 against the Debtor, Genesis Global Holdco, LLC, which claim
12 I will refer to for convenience as the contested claim.

13 After careful review, the Debtors have determined
14 that the contested claim does not correspond to any
15 liability in the Debtor's books and records, nor did the
16 contested claim provide any evidence or information in
17 support of Holdco's alleged liability. For this reason
18 alone, the contested claim should be disallowed and expunged
19 in full.

20 Further, as noted in the objection and the
21 Debtor's reply, the contested claim was also filed over a
22 month after the general bar date set in these cases, and no
23 explanation was provided for the delay, nor was there any
24 acknowledgment that the contested claim was timely. And
25 where these factors are present, courts are reluctant to

1 make a finding of excusable delay relief, which in any
2 event, Ms. Drew did not seek in her proof of claim nor her
3 response.

4 Although the Debtors are cognizant that Ms. Drew
5 does not appear to be represented by counsel in these cases,
6 the untimely feature of the contested claim nonetheless
7 provides a separate basis for this Court to disallow the
8 contested claim.

9 Finally, the contested claim is also duplicative
10 of certain master claims filed in these cases by Gemini
11 Trust Company on behalf of certain Gemini users that
12 objected to provide loans to the Debtor, Genesis Global
13 Capital, as part of the Gemini Earn Program.

14 Ms. Drew's response states that the liability
15 asserted in the contested claim relates to certain funds
16 held in her Gemini account, specifically funds that "Gemini
17 owes me in the form of Earn-related digital assets." Ms.
18 Drew attached to her response a screenshot of what she
19 describes as a copy of her Gemini digital wallet collecting
20 this balance. And Ms. Drew also asserts that her claim for
21 this balance was included in such a master claim by Gemini
22 on her behalf.

23 Based on these facts provided in the response,
24 counsel to Gemini has separately confirmed that Ms. Drew was
25 an Earn Program participant and that the amounts asserted in

1 the contested claim are otherwise reflected in the
2 applicable Gemini master claim. Although courts in this
3 district have held that it is impermissible for a claimant
4 to amend a proof of claim through a response to a claims
5 objection, Ms. Drew's response nonetheless makes it clear
6 that the contested claim is duplicative of a Gemini master
7 claim and should further be disallowed on that basis.

8 In sum, there are multiple independent bases on
9 which the contested claim should be disallowed. And so
10 based on the arguments presented in the fifth omnibus
11 claim's objection, the Debtors reply, and at today's
12 hearing, the Debtors respectfully request that this Court
13 overrule Mr. Drew's response, sustain the objection, and
14 enter the proposed order filed as Exhibit A to -- as to the
15 contested claim.

16 THE COURT: All right, thank you very much. And
17 let me ask if anybody wishes to be heard as to the objection
18 to Claim Number 747, in particular the individual who filed
19 that claim.

20 All right, I'm hearing no response. Having taken
21 a look at the claim objection, the opposition at ECF 1071,
22 and the reply on ECF 1112, it's my understanding that
23 granting this objection would not prejudice the Claimants,
24 any rights the Claimant has to recover as part of the Gemini
25 master claims that have been filed.

1 MR. LENOX: That is correct, Your Honor.

2 THE COURT: All right, and so as it appears clear
3 that her claim is actually wholly duplicative of the Gemini
4 master claims, and that that doesn't appear to be a dispute
5 based on her opposition as well as the Debtor's reply, I'm
6 happy to grant the omnibus objection as to this claim, 747,
7 for all the reasons stated, again, noting that nothing in
8 the claim objection prevents this claimant from recovering
9 through the Gemini master claims that have been filed. And
10 for that, I know that the Debtor's agree, you're looking at
11 Footnote 6 of the reply at 1112.

12 And so -- and let me ask, Mr. Lenox, I think, one
13 last question to sort of go backwards. I'm assuming that
14 the same principle applies to the extent there are any other
15 claims, individual Claimants, whose claims may have been
16 objected to and those claim objections granted based on
17 books and records or anything else for that matter to the
18 extent that they have -- are entitled to recover as part of
19 the Gemini master claims. None of the claim objections that
20 have been granted impact that ability to recover as part of
21 the Gemini master claims?

22 MR. LENOX: Yes, that's correct, Your Honor.

23 THE COURT: All right, thank you very much. I --
24 and I guess that's important, just in the sense that it
25 sounds like it's entirely possible that a claim might not be

1 reflected in the Debtor's books and records, but it may
2 nonetheless be part of one of the Gemini master claims, just
3 based on the way records were kept and who was in charge of
4 what.

5 MR. LENOX: Correct, Your Honor.

6 THE COURT: All right, so but by extension, then,
7 it means that anybody whose claim is subject to an objection
8 by books and records but who is part of the Gemini master
9 claims essentially will not be prejudiced to the extent that
10 they're allowed to recover through their -- the Gemini
11 master claims. All right, that's helpful to know. I
12 appreciate that explanation. And so the reply, I think, is
13 very helpful in sorting through those issues, which I
14 imagine will play forward as the case continues.

15 So with that, I'm happy to grant the objection to
16 Claim Number 747, and what's next?

17 MR. LENOX: Thank you, Your Honor. I will be
18 passing the podium over to my colleague, Jane VanLare.

19 MS. FIKE: And Your Honor, if I could, this is
20 Deandra Fike from Clearly Gottlieb. If I could briefly jump
21 in, we just want to confirm for the fourth omnibus objection
22 for the Exhibit 4 claim, the books and records, we'll be
23 adjourning those to the January 18th hearing, and we'll
24 provide you the supplemental information to make sure
25 (indiscernible) is clear.

1 THE COURT: All right, thank you very much for
2 that information. I appreciate it. Happy to do that, but I
3 also wanted to give you a chance to the extent that that was
4 something we could address today. But again, I'll leave it
5 to your considered professional judgment, you and Mr.
6 Kinealy, and I look forward to having that conversation on
7 the 18th. Thank you very much.

8 MS. FIKE: Okay, thank you, Your Honor. I'll cede
9 the podium to Ms. VanLare.

10 THE COURT: All right, Ms. Vanlare?

11 MS. VANLARE: Yes, thank you, Your Honor. Jane
12 Vanlare again, Clearly Gottlieb Steen and Hamilton on behalf
13 of the Debtors. Your Honor, the remainder of the agenda, we
14 have a discovery dispute with respect to Gemini that counsel
15 to Gemini has filed, a letter, and requested this
16 conference, and we'd like to address that next.

17 But also, Your Honor, this is not on the agenda,
18 but I believe that your chambers have requested us to
19 address another claims-related matter, which we'd like to do
20 following the discovery dispute, and my colleague, Mr.
21 Schwartz, will address that after we finish, given the
22 client issue at hand.

23 THE COURT: All right, I don't know the latter
24 matter that you mentioned, whether that's the request for an
25 additional claims objection hearing date or something

1 different. Okay. My -- we'll do the discovery first. My
2 question for that, and the reason to have a discussion, is,
3 I want to make sure not to, for lack of a more eloquent
4 term, cannibalize time on claims objections if that time may
5 be, in terms of sequencing, more appropriately directed to
6 the confirmation hearing, because I note that the dates that
7 were thrown out, I think, were the 7th, 8th, and 9th.

8 And we'll have any opposition to confirmation
9 filed at the end of, I guess, it's January 29th, and a reply
10 due on the 12th. And so it's all a question of sequencing,
11 which you all have a better handle on what's -- what the
12 critical path is for purposes of confirmation. So we can
13 talk about that in a minute after we get through discovery,
14 but I at least wanted to tell you the thing that I was
15 thinking about in terms of having a discussion so you can at
16 least mull it over while we talk about the specific
17 discovery issue.

18 All right, so speaking of that, I do have the
19 letter dated December 28th at Docket 1103. And so I also
20 have in front of me the schedule that, looking at from
21 Docket 1027, which is -- that was filed on December 6th, and
22 that order, which is the confirmation timeline discovery
23 schedule, and so just to make sure I have all the requisite
24 dates.

25 So it sounds like it makes sense to hear from

1 Gemini first. I do have the letter. I have read it, marked
2 it up. So no one needs to repeat everything that's in it,
3 but certainly, I want to give you a chance to highlight
4 things.

5 One of the things I'm -- I was a little -- I had a
6 question about was, it's -- the idea is Gemini can't --
7 since it can't go ahead with the proposed discovery, I
8 wasn't sure if it was talking about all discovery or
9 essentially carving out the specific discovery, saying,
10 Judge, this is something we want to do, we want to be able
11 to do this, or it's essentially putting a full stop on
12 discovery, is what the request is.

13 Because what's -- what was teed up is, looking at
14 the confirmation timeline, all parties served their request
15 for production, and non-Debtor discovery parties noticed any
16 fact deposition, survey, testimony, subpoenas, any non-party
17 witnesses, produced documents on a rolling basis, et cetera,
18 et cetera, and then also noticing fact depositions and
19 testimonial subpoenas on any non-parties. And those were
20 both listed for December 27th, so with that, I'll turn it
21 over to you all to tee the issue up.

22 MR. MILLS: Good morning, Your Honor. Carl Mills
23 from Hughes Hubbard and Reed on behalf of the Gemini Trust
24 Company. And I'll answer your first question, go back to
25 that in a moment, but first, the Debtors put this on the

1 agenda, the discovery dispute. We really see it right now
2 as more of a timing dispute. Your Honor just mentioned the
3 January 29th deadline for confirmation objections. And
4 Gemini is working towards that deadline diligently and has
5 been for well over a month, but unfortunately, rather than
6 cooperation, we've been met with some (indiscernible), but -
7 -

8 THE COURT: No, I have the letter, and I want to
9 stay away from hyperbole, so I guess -- so that's why I'm
10 trying to get down to brass tacks. So what is it
11 specifically you're requesting? To say, Judge, we have
12 these requests that we want to make to these individuals,
13 and to the extent that they -- those requests would have to
14 be made by the 27th, we just want to put a pin in that and
15 move ahead with everything else? Or does, in your mind,
16 that somehow impact everything else?

17 MR. MILLS: Right now, what we're specifically
18 requesting is relief from the deadlines, as it pertains to
19 discovery, that we want to meet on Monday with the ad hoc
20 group, but we are unable to because we don't have the
21 identities of any of the members of the ad hoc group, the
22 steering committee, and the ad hoc group members who signed
23 the plan support agreement. And so to the extent that we do
24 not have that information, we cannot serve discovery. We
25 obviously don't think it's appropriate for deadlines to be

1 enforced against Gemini.

2 THE COURT: All right, but it's as to those
3 specific individuals?

4 MR. MILLS: Yes, we had served discovery on the ad
5 hoc group as a group, and on the Debtor, and awaiting
6 responses, we have to date -- have received substantive
7 responses and objections to many of those discovery
8 requests. But relief from the deadlines, now, as we move --

9 THE COURT: Well, but again, that answers my
10 question, which was, you are going forward with other
11 discovery. Right? So this is a specific carve-out of a
12 specific issue?

13 MR. MILLS: Yes, Your Honor, but we do think that
14 the discovery that we're seeking from the ad hoc group is
15 important enough that if we are not able to get to the
16 discovery, we might not be able to meet the confirmation
17 objection deadline, and that could jeopardize
18 (indiscernible).

19 THE COURT: Well, we'll get to that in a minute.
20 So I have your letter. I don't have a response from the
21 Debtors or other folks who have skin in this particular
22 game. So Mr. Mills, unless there's something you wanted to
23 particularly highlight that's not in your letter, what I'd
24 like to do is hear from those other folks, and then we can
25 see where we are, and I'll loop back to you for your

1 response. All right?

2 MR. MILLS: Yep, the one thing, Your Honor, thank
3 you, Your Honor, that I would like to highlight is that we
4 had an offer on December 28th of the names of the steering
5 committee members, but to date, we still haven't even gotten
6 (indiscernible) to -- you know, we've received nothing
7 despite months of --

8 THE COURT: No, I got that. That's in your
9 letter. I -- I got it, and so we'll have to figure out the
10 significance of that and -- as we go, so let me hear from
11 other parties who are -- have an interest in this, so those
12 will clearly appear to be the Debtor and the ad hoc group,
13 so we'll start with the Debtors.

14 MS. VANLARE: Thank you, Your Honor. Yeah, I'll
15 start, and then I'll pass the virtual podium to counsel to
16 the ad hoc group.

17 Your Honor, so at issue, as I'm sure you saw in
18 the letter that Mr. Mills submitted, at issue is that Gemini
19 has requested the identities of the individuals who form
20 part of the ad hoc group. There's no surprise, I don't
21 think, to anyone in the context of this case as well as
22 other crypto cases, but there are obviously a lot of
23 concerns surrounding individual personally identifiable
24 information.

25 We obviously have a redaction order in place, and

1 while the order is not directly relevant to this issue, we
2 are as the Debtors very mindful of the concern from our
3 Creditor body. We had a series of meet and confers with
4 counsel to Gemini that included us, the counsel to the ad
5 hoc group, counsel to the committee. As the letter notes,
6 and I think Mr. Mills has just noted, the ad hoc group --
7 counsel to the ad hoc group did offer to provide the
8 identities of the steering committee as well as a 30(b)(6)
9 witness on behalf of the ad hoc group. Counsel to the ad
10 hoc group did however clarify that it is unable to accept
11 service on behalf of the individual members, because it does
12 not represent the individual members, and that has been a
13 sticking point. On the timeline --

14 THE COURT: So let me interrupt for a second, just
15 so I understand what sort of is an issue and what's not. So
16 it doesn't -- it sounds like confidentiality is the concern.
17 Is anybody disputing that Gemini is entitled to information
18 if confidentiality issues can be resolved?

19 MS. VANLARE: Well, Your Honor, we do not think
20 that counsel to Gemini has articulated any relevance of this
21 information to their objections, and that's really been our
22 struggle. The -- in terms of the time --

23 THE COURT: Well, let me -- sorry to interrupt
24 you, and this is easier to do in person than on Zoom, so my
25 apologies.

1 MS. VANLARE: Sure.

2 THE COURT: But the reason why I ask is because
3 there was a mention of a 30(b)(6). Right? And that's
4 certainly -- that's one of my notes here is to ask about
5 that, because it's a way of saying, well, we don't -- we --
6 as participants in the case, they have -- they get certain
7 rights, but they also have certain obligations, but it's a
8 way of addressing things, and but it does seem to, in some
9 ways, implicitly concede that, well, have a crack at it.

10 We may disagree with you as to where -- what
11 significance any of this has to do down the road, but for
12 purposes of discovery, we're okay with providing it. And
13 maybe the Debtors don't have really skin in that game.
14 Maybe that's really the ad hocs -- a question to the ad
15 hocs, but I don't know if the Debtors have a view about that
16 one way or the other.

17 MS. VANLARE: Well, Your Honor, we do think that
18 what the ad hoc group has offered is reasonable. We think
19 that the offering of a 30(b)(6) witness as well as the
20 identities of the steering committee members who were the
21 principal members involved in negotiating the plan, is a
22 very reasonable and productive solution to this issue. And
23 again, we struggle -- we tried very hard but struggled to
24 understand any relevance of the purported objections to
25 getting a list of 80-some-plus individual names.

1 THE COURT: All right, I got it. So let me hear
2 from the ad hoc group. Although, Ms. Vanlare, I may have
3 stolen some of your thunder.

4 MR. ROSEN: Thank you very much, Your Honor.
5 Brian Rosen, Proskauer Rose, on behalf of the ad hoc group.
6 Mr. Doyle, Peter Doyle, my partner here, is going to be
7 handling the discussions with me.

8 THE COURT: All right, thank you.
9 Counsel?

10 MR. DOYLE: Thank you, Your Honor. Your Honor,
11 there are three primary independent reasons why Gemini is
12 not entitled to this discovery. First, they have failed to
13 meet their burden on relevance. We have drilled down into
14 their purported claims here, statements. Mr. Rosen has
15 addressed at length the scope and nature of the releases.
16 There is no relevance to the discovery that they claim to
17 need to here so urgently (indiscernible).

18 In light of the offers, as the Court has
19 highlighted in the 30(b)(6) representative binding the
20 group, any additional discovery on these matters should be
21 cumulative and balanced against the confidentiality,
22 privacy, and burden associated with that.

23 And then third, any delay or hardship here that
24 Gemini might claim is of their own making. They had known
25 since the outset that the counsel for the ad hoc group

1 represents the group only and cannot accept service on
2 behalf of any other individuals seeking at this late date
3 the names beyond the ad hoc group, individuals -- sorry,
4 beyond the steering committee of the ad hoc group the names
5 of the individuals who were not involved in negotiations,
6 and no, are not recipient witnesses of any possible relevant
7 topics, and who, I add, could live and be located around the
8 globe and now claim that that is central discovery. It's
9 unfair. The letter from -- in so as we --

10 THE COURT: Let me just ask a very specific
11 question. Again, I appreciate everybody's good humor and
12 willingness to be interrupted on these things. It sounds
13 like the ad hoc group is -- has offered a 30(b)(6). You
14 just repeated that now, and you just mentioned the names of
15 the steering committee. So is it right to say that that's -
16 - I know Ms. Vanlare said this, but obviously, you're -- you
17 represent the ad hoc, so I want to make sure I'm very clear
18 as to what you're willing to do and what's on the table.

19 And so it sounds like the 30(b)(6) is on the
20 table. Again, preserving any rights, you have to argue
21 about relevance, and I get it. We'll get to that. Is --
22 are -- providing the names of the steering committee, is
23 that -- am I correct in understanding that that's on the
24 table in terms of -- subject to all appropriate
25 confidentiality requirements?

1 MR. ROSEN: Your Honor, again, Brian Rosen. Yes,
2 Gemini did serve us with a 30(b)(6) deposition notice. We
3 have not contested that. We have said that we would make a
4 30(b)(6) witness available. We'd do it in the context of
5 the meet and confer's offer to counsel that we would provide
6 the names of the steering co members, since they were the
7 individuals and the only individuals who were responsible
8 for the negotiation of the plan, but as Mr. Doyle did say,
9 we are not authorized to accept service on their behalf.
10 And it's that that Gemini is opposed to, because they did
11 not want to go through the process of serving that, as may
12 be required under the federal rules.

13 THE COURT: All right, thank you very much.
14 That's helpful to understand what the ultimate destination
15 of that particular rabbit hole looks like.

16 All right, but I cut you off, Mr. Doyle. Anything
17 else you wanted to explain?

18 MR. DOYLE: Well, Your Honor, it's those three
19 independent reasons that we rest on. In particular, there
20 are extensive topics in the 30(b)(6) deposition notice we
21 want to take to prepare our witnesses, subject to
22 objections. There -- the Hughes Hubbard letter, the
23 December 28th letter, does concede that they have known
24 since they made first inquiry that we as counsel for the ad
25 hoc committee could not accept service on behalf of the

1 other individuals. By their own admission, they've known
2 that for over a month since early December. So --

3 THE COURT: All right.

4 MR. DOYLE: -- again, the --

5 THE COURT: I got it. All right, so Mr. Mills,
6 your response?

7 MR. MILLS: Your Honor, the issue for us is not
8 that Proskauer won't accept service on behalf of the
9 individual members. It's that they also will not give us
10 the names and addresses of the individual members so that we
11 can serve discovery directly on them. And we've been asking
12 for that information --

13 THE COURT: So let's discuss that. So as an old
14 trial lawyer, federal rules of civil procedure have always
15 had the notion of proportionality in discovery, and to the
16 extent there was any -- that notion had been lost in more
17 recent years, it's recently been reinvigorated. And those
18 are the rules of the road. Right? We're here in bankruptcy
19 court, where -- but those are obviously the kind of
20 principals that animate what we do. And so in short, we
21 don't let the perfect be the enemy of the good, and we do
22 balance what's appropriate.

23 I did see in your letter, and I'd be interested if
24 you have any justification for standing on ceremony as to
25 knowing the identity of each one of the individuals. I

1 don't -- I'm having trouble understanding why, as a matter
2 of going ahead with this proceeding, that would be
3 necessary. Now, I can understand that perhaps there might
4 be some bells and whistles needed to lock that down, so if
5 there's some sort of statement made, representation made,
6 that the folks on the steering committee are the folks who -
7 - the only folks who were involved in plan negotiations,
8 maybe that's something. I'd certainly take the
9 representation of counsel here today as that, but sometimes
10 people want a more formal version of that --

11 MR. MILLS: (Indiscernible).

12 THE COURT: -- but you know, one could make the
13 argument that a 30(b)(6) should really get it done, but even
14 if it is in a 30(b)(6), I have trouble imagining it would go
15 beyond providing the identity of the steering committee.
16 But certainly, as we all know, the best way to deal with
17 questions about what theoretically is appropriate is to
18 start doing stuff and then see how it all plays out.

19 So my thought is, why shouldn't you go ahead with
20 the 30(b)(6), see where you are? If there's some
21 information that you're not getting, then we can cross -- or
22 as some litigator I know once said, we can burn that bridge
23 when we get to it. But let's get there first and see what
24 specific issues are then -- are left. So your thoughts on
25 that, Mr. Mills?

1 MR. MILLS: Thank you, Your Honor. Two things,
2 one, a major source of concern for Gemini, and I think, many
3 of the other Creditors and parties of interest, our
4 potential preferential transfers that went to members of the
5 ad hoc group, and that we have no expectation, was limited
6 to members of the steering committee.

7 And the major issue, which goes to -- now there
8 are 36 (indiscernible) in the first instance to try to get
9 information and then follow it up with some other discovery
10 is, we really don't have any information at all about the
11 steering -- the ad hoc group or the steering committee other
12 than what's in the disclosure statement, which is not much.
13 We don't have any of the underlying correspondence. We
14 don't have any way to connect claims that have been filed in
15 the case with members of the ad hoc group.

16 THE COURT: But that -- I don't know that what you
17 just said is a plan issue. It's kind of sort of almost --
18 we're almost talking about it, introducing each other -- you
19 know, getting an introduction after this case has been going
20 on a year. I -- that does seem to be an odd thing to stand
21 on ceremony in terms of discovery for purposes of
22 confirmation.

23 So but I understand you're talking about a
24 preferential -- you're talking about preferences, but some
25 of the things -- so I'm looking at your letter, and you

1 identified three things that you wanted to know, which is
2 your view about the plan abandoning realizable value by
3 releasing preference claims. And second is the idea of
4 providing releases to the ad hoc group members without a
5 showing of adequate contribution, and three, producing
6 potential Creditor recovery by agreeing to pay the
7 restructuring expenses.

8 Certainly, I don't know that to the extent that
9 there have been agreements reached about releases and paying
10 certain restructuring expenses, that all seems to be things
11 that, at least in the first instance, that you can ask the
12 Debtors about, you can ask the committee about. And maybe
13 you can ask the folks who are on the steering committee for
14 the ad hoc group, but I can't -- who negotiated the plan,
15 but again, I just don't see any basis to understand why the
16 entire member of the ad hoc group would be relevant to that.
17 I mean, whether they're identified or not, putting aside
18 confidentiality issues, I think we'd run into the same
19 problem, which is to say, why do we need to go down that
20 rabbit hole for purposes of confirmation discovery?

21 MR. MILLS: And Your Honor, to be clear, we have
22 no intention of serving discovery on every member of the ad
23 hoc group, but we ask for all of the information so that we
24 could start to winnow it down to the appropriate recipients
25 of that discovery.

1 THE COURT: But isn't that what a 30(b)(6) does?
2 Right? So you start --

3 MR. MILLS: If we don't --

4 THE COURT: -- there, and if you don't get the
5 information you need, you follow up. And if for some reason
6 you get an answer that says, we don't have that information,
7 and then you say, well, we think somebody -- some member of
8 the ad hoc group should have that information, then we have
9 a live case and controversy for purposes of discovery. But
10 right now, we just have theory.

11 And discovery disputes, I can say, in my 13-plus
12 years on the bench are always the least -- it's a -- least
13 useful to have any discussions about discovery disputes
14 where we're talking about theoretical controversies. Let's
15 get done what we can get done, see where we are. Everybody
16 reserves their rights, and usually, if we can move forward,
17 the amount of disputes that we have that need to be
18 adjudicated shrink dramatically. So --

19 MR. MILLS: And Your Honor, if I may --

20 THE COURT: Yeah.

21 MR. MILLS: -- that's why we raised this as a
22 timing issue, right, not as a discovery issue. Again, we
23 didn't actually --

24 THE COURT: But we have a month. I mean, the
25 entire Chrysler case was done in a month. We have a month,

1 so I think we're not there yet, so I would think that a
2 30(b)(6) that's properly done, the identification of the
3 steering committee members, all under appropriate sealing
4 that I'm sure you can work out, and then we see where we
5 are. So I would say to schedule that promptly, get your
6 list of what you want to ask to the extent it's different or
7 you have more things to say than what's identified in the
8 bottom of this letter. And then, let's see where we are.

9 So let me ask, I think you all have a gist of
10 where I'm going with this. If anybody has anything that
11 they want to throw out that would help move the ball
12 forward, I recognize that as sitting in this chair, I am not
13 privy to all the extensive conversations that have occurred,
14 and so Judges are all -- that's the other reason why we ask
15 you all to do what you can and then figure out where we are,
16 is because I am not in the room where it happens, and I'm
17 acutely aware of that, having been on the other side. So
18 I'm throwing darts as best I can, but I welcome any addition
19 wisdom or thoughts about how to move things forward in a
20 productive way. So I think we should start with a 30(b)(6).

21 Mr. Mills, you should get your topics out, and
22 then the committee, the ad hoc group, can figure out what --
23 how it's going to respond to that, who it's going to
24 identify.

25 And so let me ask counsel to the ad hoc group if

1 there's any impediments that they see with going ahead in
2 that fashion.

3 MR. ROSEN: No, Your Honor. We're prepared to go
4 forward in that fashion. We will make some objections to
5 the topics as are appropriate, but we will bear witness, and
6 we think we can cover these topics.

7 THE COURT: All right. And so, Mr. Mills, I think
8 the flash point you anticipate about not getting everything
9 you need, I mean, that's what -- that's the whole point of
10 the 30(b)(6) identification of topics, so that they can find
11 the appropriate folks. If they need to designate more than
12 one person, then that's what they'll do. And so let me ask
13 the Debtors if you have any other -- any thoughts about
14 missing anything in terms of proceeding along this course.

15 MS. VANLARE: No, Your Honor. I think you got the
16 issues exactly right, and as I mentioned, we think this is a
17 very reasonable way to --

18 THE COURT: Thank you, I so rarely hear that, so I
19 appreciate it. It's -- rather be lucky than good.

20 All right, so Mr. Mills, so let me ask about
21 timing of this. Right? Because I don't want to create a
22 fire drill or a problem for anybody. We have a month.
23 That's a decent amount of time, but it's not an unlimited
24 amount of time. But if the 30(b)(6) process drags on, we
25 could find ourselves with this kind of conversation at the

1 end of January for reasons that could have been avoided.

2 So what -- what's the -- have the parties talked
3 about a timetable for getting the 30(b)(6) notice out with
4 the topics and then designating a witness and having that
5 witness testify so that if there are any hanging chads, so
6 to speak, that are left and things to follow up, we have
7 time to do that. So Mr. Mills, what's your thought about a
8 schedule?

9 MR. MILLS: Your Honor, we -- Gemini served
10 30(b)(6) topics almost two weeks ago on both the Debtors and
11 the ad hoc group. We haven't received a response formally
12 from either.

13 THE COURT: All right, all right, that's --

14 MR. MILLS: And so we're awaiting that, and then
15 we're ready to go, other than we also served document
16 requests, and it would be very helpful to have some of those
17 documents prior to the 30(b)(6) deposition, but we haven't
18 heard anything about when we might be getting those, either.

19 THE COURT: Well, getting --

20 MR. ROSEN: Your Honor.

21 THE COURT: Yeah, go ahead.

22 MR. ROSEN: I'm sorry for -- yes, Mr. Mills is
23 correct. They served the deposition notice on the 21st, and
24 it is currently scheduled for January 22nd at -- yeah, at
25 Cleary's offices or remotely. So we will be responding

1 appropriately.

2 THE COURT: All right, so I certainly encourage
3 folks to get as much information out as quickly as possible.
4 I think that's, frankly, the way you all have been
5 approaching it, because your -- the scheduling order, which
6 you put together and I approved, talks about things on a
7 rolling basis with production at the earliest possible date.
8 That's to avoid problems of saying, well, we didn't have
9 this document when we were going to talk to this witness, or
10 we had that document but we would have added a topic to our
11 30(b)(6) examination. So I encourage the documents to get
12 produced as quickly as possible.

13 And as for the 22nd, I don't want to micromanage
14 anybody's schedule. That usually doesn't work so well, but
15 I will say, to the extent that anything can be done, I
16 wouldn't let it slip, given the objection deadline. And to
17 the extent that it could be moved up, that's probably not
18 the worst idea, either, so that there's time to get
19 everything done without affecting the confirmation schedule.

20 So all right, so with that, that's my ruling on
21 the discovery issue that's raised by the letter of December
22 28th, Docket 1103.

23 And Mr. Mills, anything else that you wanted to
24 raise that would be helpful to talk about at this point?

25 MR. MILLS: Many things, Your Honor, but I think

1 we'll stand on the record (indiscernible).

2 THE COURT: All right. All right.

3 MR. MEDINA: Your Honor?

4 THE COURT: Yes.

5 MR. MEDINA: Your Honor, this is Eric Medina for
6 BAO Holdings. We haven't appeared in this case before, but
7 I filed a notice of appearance, and I just had a question
8 regarding this topic, because it just came to light, and I
9 actually just realized that this was going to be -- I was
10 informed that this was going to be on the calendar this
11 morning, and I just had a question for you, Judge, and for
12 counsel, because I've spoken with Ms. Vanlare of Cleary
13 regarding some information.

14 Your Honor, my client is an earned user who is
15 owned a couple million dollars and is --

16 THE COURT: Mr. Medina, before we jump into your
17 issue, I want to make sure to close out the issue that we
18 were talking about, just for --

19 MR. MEDINA: Sure.

20 THE COURT: -- as a matter of good order. So let
21 me ask the ad hoc group counsel if there's anything else
22 that we should discuss in connection with the letter.

23 MR. ROSEN: No, Your Honor.

24 THE COURT: All right, and last but not least, Ms.
25 Vanlare, anything else from the Debtors?

1 MS. VANLARE: No, Your Honor.

2 THE COURT: All right, Mr. Medina, you have the
3 floor.

4 MR. MEDINA: Thank you, Your Honor. I'll be very
5 brief. Judge, we're just getting involved in this case.
6 The long and the short of it is, we're just trying to get
7 some information with regards to some of the documents and
8 information that was been -- that's been marked
9 confidential. Some of it, I hear Your Honor loud and clear
10 on what Your Honor is thinking as with regards to the
11 request made by Mr. Mills's office regarding information.
12 But I just have --

13 THE COURT: Well, let me ask whether -- so let me
14 ask whether you've had the conversation with counsel for
15 various parties about this request. First, I'm -- it's
16 probably not the best way to go to have the conversation
17 first with me, so I -- if it's coming up for the first time
18 now, I'm going to very politely and gently give you the
19 Heisman Trophy pose, which is to say you should go talk to
20 each other --

21 MR. MEDINA: Yes.

22 THE COURT: -- and see where you are.

23 MR. MEDINA: Yes.

24 THE COURT: And you'll have to work around the
25 confidentiality issues that have been raised by the decision

1 that I issued on that. But I think everyone here recognizes
2 that that's designed to protect everybody's privacy to the
3 maximum extent possible, but then, when litigating and
4 injecting yourself into the fray, that does come with
5 obligations to provide appropriate information for purposes
6 of anything that needs to be litigated.

7 So Mr. Medina, if you haven't had those
8 conversations yet, I would encourage you to do that
9 promptly, and I don't want to jump in front of that. I
10 don't want anyone to feel like they were hijacked. That's,
11 and again, I'm happy to discuss discovery issues. Well,
12 "happy" may be an overstatement, but I'm always willing to
13 discuss discovery issues if they can move a case forward
14 efficiently rather than get too bogged down in too many
15 letters and motions, and frankly, I think the parties in
16 this case have handled it very appropriately.

17 I know that Gemini's letter was only after a lot
18 of discussion back and forth with the parties. It was
19 brief. It was straightforward, and so that's the way I'd
20 like to do it, but again, I think Gemini handled it
21 appropriately by knowing that they had essentially a live
22 dispute before coming to the Court.

23 MR. MEDINA: Naturally, Your Honor, but if I may,
24 just briefly, I hear you loud and clear, Judge. I think
25 what I wanted to get to was, I'd like to have some of those

1 further conversations. I'm wondering if there's a date
2 that's been set, any kind of discovery or holding that --
3 excuse me, a holding date that's been set to address any of
4 these kinds of issues. I think I heard the 22nd.

5 THE COURT: No, I think they're raised as we go
6 along, and there is a --

7 MR. MEDINA: Okay.

8 THE COURT: -- confirmation timeline and discovery
9 schedule that's at Docket 1027.

10 MR. MEDINA: Yeah, I don't --

11 THE COURT: And as I said, I'm happy to make
12 myself available to deal with things. You know, my
13 background as a litigator, and I know that sometimes it's
14 just helpful to get answers on these things, and also, that
15 spending a lot of money and time writing discovery motions
16 or extensive letters is not necessarily the best use of
17 anybody's time for issues that can be explained and
18 addressed as they've been done here today.

19 So with that, I'll let you have at it, and my
20 general rule is that I'm happy to talk to people about
21 discovery so long as I'm not the first conversation that you
22 all have had. That's what the meet and confer rules are
23 about, and so wiser minds than mine have come up with those
24 rules, and I -- I'm going to follow those for discovery.
25 But you'll see -- have those conversations and see where you

1 end up.

2 MR. MEDINA: All right, good. Thank you, Judge.

3 THE COURT: All right, so with that, Ms. Vanlare,
4 let me ask if there's anything else that we need to address
5 here from the point of view of the Debtors today.

6 MS. VANLARE: Not on this issue, Your Honor, but
7 I'm just going to allow my colleague, Mr. Schwartz --

8 THE COURT: Okay.

9 MS. VANLARE: -- to discuss the matter that we
10 previously (indiscernible).

11 THE COURT: All right, Mr. Schwartz, happy to hear
12 from you.

13 MR. SCHWARTZ: Good morning, Your Honor.

14 THE COURT: And again, my -- so there are times
15 when certain claim objections are things that say, Judge, we
16 have to get this resolved before confirmation, it literally
17 stands in the way of confirmation because of the issue or
18 because of the amount. And then, there are other times
19 where, notwithstanding their importance, they're not
20 necessarily in the critical path.

21 And so it may come as no surprise to you that
22 oftentimes we know we're going to have a contested
23 confirmation, and here in chambers, we start working on
24 those issues well before we have the confirmation hearing.
25 And so I don't want to distract from time-sensitive issues

1 unless there's a good reason to do so. So with that
2 buildup, Mr. Schwartz, I'm happy to hear from you.

3 MR. SCHWARTZ: Understood, thank you, Your Honor.
4 Just so the record's clear, David Schwartz of Cleary
5 Gottlieb on behalf of the Debtors. So Your Honor, we
6 totally understand that the confirmation is right around
7 what we had requested, those dates for those claims
8 objections. As I'm sure Your Honor knows, we're -- as
9 you've seen from today and over the course of the coming
10 weeks, there are claims objections scheduled because we're
11 trying to resolve as many claims as possible in advance of
12 an effective date so that claimants can get distributions on
13 the effective date, assuming the plan is confirmed.

14 I think, as you've also seen, when a claim
15 objection is contested, we routinely, over the past few
16 weeks, we've sought and received an adjournment from Your
17 Honor of those contested claims objections, and so what I'd
18 propose is, if Your Honor is amenable to schedule, to allow
19 us to have those scheduled dates of the 7th, 8th, or 9th of
20 February. And to the extent there is a response that would
21 lead to a contested matter or a contested objection, the
22 Debtors would, of course, as they've done in the past, try
23 to resolve that and would seek an adjournment.

24 THE COURT: All right, I appreciate your
25 sensitivity to that and certainly understand your desire to

1 get as much progress on this as possible. And so that's
2 very helpful to know we're all on the same page, and I'm
3 happy to give you the date. Do you prefer the 7th or the
4 8th?

5 MR. SCHWARTZ: I think the 8th works well for the
6 Debtors, Your Honor.

7 THE COURT: All right, so let's use the 8th at,
8 let's say, 11 o'clock. And that sounds fine. And again, I
9 know we had our conversation today about books and records
10 objections and some of the details that -- what the case all
11 looks like in particular circumstance. And so I think
12 that'll also help us to move forward efficiently on those.
13 And it's my understanding that this would be -- the 8th
14 would just be for the claim objections or would it be for --
15 do you anticipate it being for anything else?

16 MR. SCHWARTZ: I think as of now we anticipate it
17 being for the claims objections. I think we will certainly
18 be mindful of what Your Honor just said in terms of chambers
19 getting ready for a potentially contested confirmation
20 hearing. So before anything else goes on the calendar that
21 may be contested, we're happy to sort of work with your
22 chambers to make sure that we're all on the same page.

23 THE COURT: Okay, great. Thank you very much. I
24 appreciate it. These are always very helpful conversations,
25 very much in the help-us-to-help-you vein, so Mr. Schwartz,

1 thank you very much for all the insight. And so the 8th at
2 11 o'clock.

3 MR. SCHWARTZ: Thank you, Your Honor.

4 THE COURT: And with that, anything else from the
5 Debtors?

6 MR. SCHWARTZ: No, Your Honor. I believe that's
7 the -- we've completed the agenda.

8 THE COURT: All right, and let me ask if there's
9 any other party that has any other issues that would be
10 appropriate or helpful to raise today.

11 All right, hearing nothing, thank you all very
12 much for being here, and I'll look forward to seeing you
13 soon.

14 MR. SCHWARTZ: Thank you, Your Honor.

15 MS. VANLARE: Thank you, Your Honor.

16 (Whereupon these proceedings were concluded at
17 11:49 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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